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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,312	09/26/2001	Cam Reed JR.	HO-P02301US0	9919 7
26271	7590	11/19/2003	EXAMINER	
FULBRIGHT & JAWORSKI, LLP 1301 MCKINNEY SUITE 5100 HOUSTON, TX 77010-3095			COLE, LAURA C	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 11/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/964,312

Applicant(s)

REED, CAM

Examiner

Laura C Cole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claims 1-10 are objected to because of the following informalities:

Claim 1 Line 14 recites, "zero or more attachment poles, each pole having..." It is unclear as to how a gutter sweep with "zero" attachment poles would have "a pole attachment end."

Claims 1 (Line 9) and 6 (Line 8) recite "said handle attachment end" which does not have antecedent basis until later in the claim where the handle is first recited (Claim 1 Line 12 and Claim 6 Line 14).

In Claims 6 (Lines 5 and 6) and 8 (Lines 5 and 6) there is a repetition of the word "and" between the two paragraphs (one instance is at the end of Line 5 and the beginning of Line 6).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claims 1, 6, and 8 the recitation "...a blade end having a concave face and a convex back, said blade end having a substantially longitudinal axis, and a head attachment end having a longitudinal axis, said handle longitudinal axis being substantially parallel to said blade end longitudinal axis, said handle attachment end

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and said blade end connected in a manner..." is unclear. Examiner is not sure if the "head attachment end" and "handle attachment end" are two separate attachment ends or referring to the same element.

Claim 1 recites the limitation "said handle longitudinal axis" in Line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "said handle longitudinal axis" in Line 7. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "said handle longitudinal axis" in Line 7. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "said handle attachment end" in Line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 6, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith, USPN 4,848,818.

Smith discloses a gutter cleaning tool that comprises a scooping head having a blade end (Figure 3, leftmost portion of scoop (10)) and a head attachment end (Figure 3 (12)) wherein the blade end is curved (Figure 3), a handle having a gripping end and a handle attachment end (Figures 1-2 and 5 (16)) wherein the attachment end is the

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threads shown in Figure 5), and an attachment pole joint (Figure 2 (14A and 14B) comprise the attachment ends, also see Figures 3-5). Further, the scooping head comprises a blade having a concave face and a convex back (as shown in Figure 3), the blade end having a longitudinal axis (see all Figures), a head attachment end having a longitudinal axis (14A), the axis being substantially parallel to the blade end longitudinal axis (see Figure 2, the two positions marked in dash lines wherein Figure 2 resembles "the range of selectable positions of the tool around the multi-positional joint with additional positions...", Column 3 Lines 17-19), the handle attachment end and the blade end connected in a manner (see Figures).

4. Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Chisholm, USPN 4,640,540.

Chisholm discloses a gutter cleaning tool that comprises a scooping head (Figures 1-5 (10)) having a blade end (leftmost side of Figure 2) and a head attachment end (Figure 2 (18)) wherein the blade end is curved (Figures 1-4), a handle having a gripping end (Figures 1 and 2 (20)), and zero attachment poles. Figure 1 (20) is considered a "pole body" that is affixed to the scooping head. Further, the scooping head comprises a blade having a concave face and a convex back (see Figures), the blade end having a longitudinal axis (see Figures), a head attachment end having a longitudinal axis (20, at joint where "20" is indicated in Figure 5), the axis being substantially parallel to the blade end longitudinal axis (see Figure 2), the handle attachment end and the blade end connected in a manner (see Figures).

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, USPN 4,848,818 in view of Malless, Jr., USPN 4,447,927.

Smith discloses all elements above, however does not provide cleaning bristles positioned on the blade end.

Malless, Jr. discloses a gutter cleaning apparatus that comprises all elements mentioned in the previous Office Action, Paper No. 5, of 26 June 2003 including bristles positioned on the blade end (24) and (26) to aid in removing debris from gutters (Column 1 Lines 48-63). Further, the portion (48) which is considered as a head attachment end is not parallel to the handle attachment end (50; Column 3 Lines 24-26).

6. Claims 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, USPN 4,848,818 in view of Beers, Jr. et al., USPN 6,393,646.

Smith discloses all elements above, however does not disclose a rubber grip on a gripping end.

Beers, Jr. et al. disclose a golf green brush that has a handle (Figures 1-2 (20)) with a rubber grip portion (Figures 1-2 (40); Column 2 Lines 7-16).

It would have been obvious for one of ordinary skill in the art to modify the gripping portion of the handle of Smith by adding a rubber grip as Beers, Jr. et al. teach so that the user has a comfortable grip when manually cleaning a surface.

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7. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, USPN 4,848,818 in view of Malless, Jr., USPN 4,447,927.

Smith and Malless, Jr. disclose all elements above, however Smith does not provide specific materials for the scooping head or attachment pole.

Malless, Jr. discloses a gutter cleaning apparatus that comprises a scooping head having a blade end and a head attachment end (Figure 1 (12); Column 2 Lines 28-30) and made of plastic (Column 3 Lines 37-40), a handle (Figure 1 (50)) having a gripping end (outer circumference may be gripped) and a handle attachment end (lowermost portion of (50)), and attachment poles made of plastic (Figure 1 and Figure 4; Column 3 Lines 44-46).

It would have been obvious for one of ordinary skill in the art to modify the gutter sweep that Smith discloses for one with parts made of Plastic as Malless, Jr. teaches, so that the cleaner is durable and inexpensive to manufacture.

8. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, USPN 4,848,818.

Smith discloses all elements above, however does not provide specific materials for the scooping head or attachment pole.

It would have been obvious for one having ordinary skill in the art at the time the invention was made to have the materials be from the group wood, plastic, metal, composite material, or a combination of those since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability

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for the intended use as a matter of obvious engineering choice. In re Leshin, 125 USPQ 416.

9. Claims 1, 2, and 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malless, Jr., USPN 4,447,927 in view of Smith, USPN 4,848,818.

Malless, Jr. discloses all elements above including a gutter cleaning apparatus that comprises a scooping head having a blade end and a head attachment end (Figure 1 (12); Column 2 Lines 28-30) and made of plastic (Column 3 Lines 37-40), wherein said blade end is curved in a manner allowing the blade end to fit up and over a gutter (the blade end is the left most end of the scoop shown in Figure 1, wherein side walls 18' curve), a handle (Figure 1 (50)) having a gripping end (outer circumference may be gripped) and a handle attachment end (lowermost portion of (50)), attachment poles made of plastic (Figure 1 and Figure 4; Column 3 Lines 44-46), a plurality of cleaning bristles (Figure 1 (24), (26), and (38)). Further, Figure 5 displays an attachment pole (32) having a first pole attachment end (34) and a second pole attachment end (34'), the first pole attachment end being detachably affixed to the head attachment end (30) of the scooping head. Even further, Figure 5 displays a handle (pole beneath (32)) having a gripping end and a handle attachment end (upper portion of pole beneath (32)) detachably affixed to the second pole attachment end (34') (see Column 2 Line 60 to Column 3 Line 5). Further the blade end has a concave face and convex back (see Figures), the blade end has a substantially longitudinal axis (the axis at the portion (48)), that axis being *substantially* parallel to a handle axis (50; however the handle (50) and the blade end axis (48) are about 5 degrees off parallel, Column 3 Lines 24-26).

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Malless, Jr. does not disclose a blade end axis being parallel to the handle longitudinal axis.

Smith discloses all elements above, including the teaching that it is desirable to have an adjustable handle (wherein one position the blade end axis is parallel to the handle longitudinal axis, see Figures) to provide a range of positions depending on the user's preferences (Column 1 Lines 21-30, 62-67).

It would have been obvious for one of ordinary skill in the art to modify the attachment portion of Malless, Jr. for the one that Smith teaches in order to provide an arrangement wherein the user can set the position so that the blade end axis is parallel to the handle longitudinal axis to use as desired.

Applicants Arguments

10. In Applicant's response, Paper No. 6, filed 26 September 2003, the Applicant contends that none of the cited art alone or in combination discloses a scooping head comprising, a blade end having a concave face and a convex back, said blade end having a longitudinal axis, and a head attachment end having a longitudinal axis, the handle longitudinal axis being substantially parallel to said blade end longitudinal axis, said handle attachment end and said blade end connected in a manner allowing said blade end to fit up and over a gutter.

Response to Arguments

11. Applicant's arguments filed 26 September 2003 have been fully considered but they are not persuasive.

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As far the claims are understood, Smith, Chisholm, and Malless, Jr. provide evidence of, teach, suggest a scooping head comprising, and/or provide appropriate motivation for a blade end having a concave face and a convex back, said blade end having a longitudinal axis, and a head attachment end having a longitudinal axis, the handle longitudinal axis being substantially parallel to said blade end longitudinal axis, said handle attachment end and said blade end connected in a manner allowing said blade end to fit up and over a gutter.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C Cole whose telephone number is (703) 305-

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7279. The examiner can normally be reached on Monday-Thursday, 7am - 4:30pm, alternating Fridays. On December 17th, the Examiner's office will be located at the new USPTO site in Alexandria, Virginia. At this projected date, you may reach Examiner Laura Cole by phone at 571-272-1272 or by fax at 571-273-1272.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be reached on (703) 308-2920 (or after December 17th may be reached at 571-272-1281). The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

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LCC

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